



Law, Justice, and Indian Affairs Interim Committee

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56th Montana Legislature

SENATE MEMBERS

LORENTS GROSFIELD, PRESIDING OFFICER
SUE BARTLETT
JOHN BOHLINGER
DUANE GRIMES
MIKE HALLIGAN
LINDA J. NELSON

HOUSE MEMBERS

CAROL C. JUNEAU, VICE PRESIDING OFFICER
GAIL GUTSCHE
GARY MATTHEWS
DANIEL W. "DAN" MCGEE
JIM SHOCKLEY
JAY STOVALL

COMMITTEE STAFF

LEANNE KURTZ, RESEARCH ANALYST
VALENCIA LANE, STAFF ATTORNEY
JOHN MACMASTER, STAFF ATTORNEY
LOIS O'CONNOR, SECRETARY

MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Fourth Meeting of Interim
Room 487, Federal Building, Helena
February 13 and 14, 2000

COMMITTEE MEMBERS PRESENT

Sen. Lorents Grosfield, Presiding Officer
Rep. Carol C. Juneau, Vice Presiding Officer
Sen. Sue Bartlett
Sen. Duane Grimes
Sen. Mike Halligan
Sen. Linda J. Nelson
Rep. Gail Gutsche
Rep. Gary Matthews
Rep. Daniel W. "Dan" McGee
Rep. Jay Stovall

COMMITTEE MEMBERS EXCUSED

Sen. John Bohlinger
Rep. Jim Shockley

STAFF PRESENT

Leanne Kurtz, Research Analyst
Valencia Lane, Attorney
Lois O'Connor, Secretary

VISITORS

Visitors' list (ATTACHMENT #1)

COMMITTEE ACTION

- Approved the November 18 and 19, 1999, and December 10, 1999, minutes as amended
- Approved April 13 and 14, 2000, as the next meeting dates

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Sen. Grosfield, Chair, at 9:00 a.m. Roll call was noted; Senator Bohlinger and Representative Shockley were excused. (ATTACHMENT #2)

Sen. Bartlett **moved** to amend the November 18 and 19, 1999, and the December 10, 1999, minutes as follows:

- Page 2 -- last paragraph -- . . .in particular Native Americans, since they ~~represent the majority of the~~ are over represented in the inmate population.
- Page 6 -- Topic #7 -- last sentence in the second bullet -- The MWP ~~cognitive and behavior programs have evoked an approach specifically designed to the women's prison criminal thinking area~~ has developed cognitive and behavior programs specifically designed to the women's criminal thinking process.
- Page 15 -- bottom bullet -- The Board's ~~budget is \$15,000 annually and it has a staff of seven~~ expense reimbursement budget is \$15,000 annually and its total budget is in excess of \$380,000 for operating expenses, personal services, and a staff of seven.
- Page 19 -- parenthesis (1) under Rights of Inmates -- . . .logical connection to a legitimate governmental ~~entity~~ interest.
- Page 19 -- last sentence of paragraph one under Rights of Inmates -- The fact that MSP accommodates Indian religious needs ~~implicates~~ indicates that . . .
- Page 25 -- first paragraph -- ~~Although there may be a separation of powers issue if legislators were to respond to the letters, she~~ She suggested that staff . . .

December 10, 1999

- Page 5 -- bottom paragraph -- . . . workload of other states. ~~Ms.~~ Mr. Smith said . . .

The November 18 and 19, 1999, and the December 10, 1999, minutes were approved unanimously as amended.

PLEASE NOTE: These changes have been made to the original minutes which are on file in the Legislative Services Division.

LJIAC WEB PAGE DEMO

Leanne Kurtz, Research Analyst, Legislative Services Division, gave a demonstration of the Legislative Branch and the Committee's web pages. The Branch web page includes legislator addresses and a legislative district map. The Committee's web page includes Committee minutes, reports, agendas, membership, the Tribal Nations Handbook, and what studies are assigned to it.

Rep. Juneau suggested that the Committee's web page link to the Office of the Coordinator of Indian Affairs. She added that the both web pages would be a good educational resource for schools that are studying government. She questioned how Committee staff could alert schools that the information was available.

EMINENT DOMAIN SUBCOMMITTEE UPDATE

Rep. Gutsche stated the following:

- The Eminent Domain Subcommittee has met three times to date and has four or five meetings remaining.
- The focus of the study is to determine how eminent domain is working and whether eminent domain is well understood and in line with the current needs of Montana since the eminent domain statutes were written over 100 years ago.
- Subcommittee discussion topics revolve around multiple use of easements, public use, what defines public use and is public use the same today as it was 100 years ago, liability and mitigation issues, possession of property by the plaintiff, perversion of property, condemnation of property and how the property owners are compensated, due process, burden of proof, and rights of reentry.
- According to Krista Lee, EQC staff, liability and mitigation issues may be out of the scope of the Subcommittee and may require separate legislation to address, depending on how the Subcommittee decides to address those issues.
- Most comments made at the public meetings surround the Tongue River Railroad and the Yellowstone Pipeline projects.
- An eminent domain handbook, similar to the MEPA handbook, will be written and published by EQC staff.
- The biggest question is whether the EQC and LJIAC Joint Subcommittee will recommend legislation. Suggestions for legislation that have been brought to the Subcommittee include cleanup and clarification of the statutes and making the statutes more applicable to what Montana is facing today.
- The Subcommittee hearing in Billings will be held on the Metnet interactive video system so that outlying communities can be involved.

Krista Lee, Legislative Environmental Quality Council Staff, added that the Subcommittee is becoming more comfortable about making decisions on legalities and it understands the importance of building a foundation to make sure that the eminent domain laws are adequate. In addition, the Subcommittee may recommend further study of liability and mitigation standards for pipelines.

Sen. Nelson asked if the public hearings have been well attended. Rep. Gutsche said that the public is definitely interested in eminent domain, particularly in the mitigation arena.

HJR 37 WOMEN'S PRISON STUDY UPDATE

Sen. Grosfield provided an overview of a 3-day conference on women offenders put on by the United States Department of Justice. He stated the following:

- The conference focused on why there has been such a large nationwide increase in the number of women in prison.
- According to conference statistics, women comprised 3% of the inmate population in 1970; 4%, in 1980; 5%, in 1990; 6 1/2%, in 1998; and currently, the women's prison population is much higher.
- Nationwide, 40% of the women inmate cases were substance-abuse related and 28% were juveniles.
- A typical scenario for women inmates begins with sexual abuse at home, prostitution after leaving home, followed by involvement with men who are involved in crime.
- In Ohio, 85% of the women inmates were incarcerated for the first time, there is a low recidivism rate, and over 50% of the women inmates report that their children never visit them.
- California reports that 85% of its women inmates were involved with drugs.
- One theme of the conference centered around the fact that as drugs have become a larger problem, the nation has tightened up its drug laws resulting in a larger number of women in prison.
- Although the new drug laws have incarcerated more people, law enforcement has netted only minor offenders.
- Often, women offenders are accomplices rather than drug "king pins" who are usually men. As a result, when women get to court, they do not have anything in the way of bargaining power when it comes to pleas.
- Another nationwide contributor to the inmate population is mandatory domestic violence arrests.
- According to the philosophy of the Rhode Island women's prison warden, the Department of Corrections' first job is public safety. It should not be involved in the treatment or education of inmates and rehabilitation should be handled by some other entity. The warden had reported that Rhode Island contracts out its treatment and rehabilitation programs resulting in a much better chance for followup treatment after inmate discharge.
- The Montana conference participants have discussed profiling women offenders through a female offender survey. Warden Acton will coordinate the survey with Committee staff to begin a series of questions that could be asked of the women inmates.

Rep. Gutsche asked if conference discussions focused on revamping the drug laws to keep fewer women out of prison. Sen. Grosfield said that all states are faced with budget crunches and prison accommodations for women varies from state to state. As a result, most states are trying to channel non-violent offenders to programs and places other than prison just because of economics. The question is what crimes are considered to be non-violent crimes.

Sen. Bartlett commented that the adoption of mandatory sentencing structures on both the state and federal levels have also added to the male and female prison populations. The 1995 Sentencing Commission asked the Department of Corrections for information about crimes for which men were incarcerated at MSP. It was found that a very low percentage of Montana's male inmates were incarcerated because of drug crimes which is atypical for the nation. Sen. Bartlett suspected that this

scenario would also be somewhat true at the MWP. She added that the statistics may have changed in the last few years but not dramatically because Montana does not have mandatory sentencing. Consequently, individuals who are charged with crimes, such as drug use or low-level drug distribution, do not typically end up in the prison system.

Rep. Stovall asked if discussions were held on the number of Native American women within the prison system. Sen. Grosfield said that there was talk about other ethnic groups in the prison system but very little discussion about the Native American prison population.

Sen. Nelson asked if the Committee was going to proceed with the female offender survey. Sen. Grosfield said that he has discussed the survey with Warden Acton and she and Committee staff will be tailoring the survey to Montana needs. Warden Acton estimated 100 or more responses. Ms. Kurtz added that she has been keeping a list of Committee questions and will be sending a survey draft out for Committee review.

Rep. Juneau suggested that the survey questions be administered by impartial people rather than prison staff in order to receive better and valid responses. In that way, the survey may give some clues about prevention as well as a good profile of who is in the prison system. She also suggested future follow up of women who have been out of prison for a time to find out what factors have kept them out of prison.

SJR 14 SENTENCING STUDY

Data Element Survey Review

Susan Fox, Research Analyst, Legislative Services Division, provided a Checklist for Legislative Interest in Data Element Availability. (EXHIBIT #1) and stated the following:

- There are 207 correctional data elements of which 100 are core elements.
- The checklist will be provided to and filled out by all correctional stakeholders to find which data elements the stakeholders collect in their databases.
- She requested that the Committee review the checklist and mark those areas where members have a legislative interest. The checklist will then be cross checked with the female offender survey.
- The comment section of the checklist is provided for the Committee to answer how a particular data element could be used for legislative policy.
- The Sentencing Commission survey and the Montana Board of Crime Control data will be added to the checklist.
- Each agency was asked to complete the same checklist, expecting that certain elements would be specific to certain agencies.
- Committee members were asked to give their input as to which agency or department would be most appropriate to collect the data.

- Because Committee staff wanted a draft data element checklist available for the April meeting, the Committee was asked to return the checklist as soon as possible or no later than April 1.

Sen. Grosfield asked what "cj status at time of arrest", what "split or mixed", and what "charges from indictment" and "charges from commitment" meant (see pp. 4 and 5 of Exhibit #1). Ms. Fox said that cj means "criminal justice status at time of arrest", such as whether the offender was a regular citizen at the time of arrest or on probation or parole at the time of arrest. "Split or mixed" means that an offender may have more than one sentence, such as two sentences that are concurrent and one sentence that is consecutive or one sentence that is deferred and one that is not or the sentence could be multiple. Ms. Fox added that "charges from indictment" means the initial charge for an offender made at the time of arrest, such as an offender being charged with deliberate homicide at the time of arrest but convicted of mitigated deliberated homicide. "Charges from commitment" involve plea bargaining.

Rep. Juneau asked if alcohol was included in the data element "tested for drug use at admission". Ms. Fox said that "tested for drug use at admission" was all inclusive.

Sen. Grimes requested a list of the 100 core data elements and Sen. Bartlett requested a broad list of which department is responsible for capturing what types of data from arrest through discharge from supervision.

Ms. Fox provided a copy of the Department of Correction's presentation Is There Such A Thing As Confidential Criminal Justice Information that she received while attending a continuing legal education (CLE) class in Missoula. (EXHIBIT #2) She said that the Committee may want to recommend statutory changes to update the Criminal Justice Information Act. Because the Legislature has not amended the statutes in response to the Supreme Court's decisions regarding confidentiality and the public's right to know and because the Executive Branch agencies that collect criminal justice information are taking their lead directly from statute, the Legislature could give the agencies more guidance as to what types of information to collect while they are developing their information systems.

Sen. Grimes asked about the discussion surrounding the Department's CLE presentation. Ms. Fox said that there was very little discussion about the presentation because many local level people, which is where most criminal justice takes place, do not deal with the statutes on an every day basis. She added that confidentiality is a nationwide issue and the information found to be the most confidential are in the medical and mental health arenas.

Rep. McGee asked if a person is found guilty of a sexual crime, for example, at the first judicial level and if the sentence is appealed, is the person presumed innocent during the appeal and what happens to the person and the criminal justice information if the guilty conviction is overturned . **Valencia Lane, Staff Attorney, Legislative Services Division**, said that once a person is convicted, the person is considered guilty. If the conviction is overturned , the person could petition the Court to have the records sealed and the person would not have to remain a registered sex offender if found not guilty. She said that because the person had once been convicted, the issue is already a matter of public information and knowledge, the damage has been done, and the person could consider a civil suit.

Purposes of Sentencing and Release

Ms. Fox stated the following:

- Montana's criminal justice system is retributive and usually offender based.
- The four traditional uses of sentencing and release are punishment, incapacitation, rehabilitation, and deterrence. Deterrence is made up of two components. Specific deterrence personally deters a person from offending for the time that the person is incarcerated while general deterrence is a statement from society that, for example, if the death penalty is imposed, it will deter future criminals from committing the same offense.
- The purpose of indeterminate sentencing was to allow for offender rehabilitation.
- Because of the 2- and 3-strikes laws, charge bargaining and jury trials have increased.
- Sentencing reform has generally been to limit the prosecution and judicial discretion.

Sen. Bartlett commented that the Sentencing Commission substituted the word "rehabilitation" with "reformation" because the concept of rehabilitation is to restore an offender to the state that the offender was in before incarceration. The Commission did not want the offender in that state because that state is what got the offender in the prison system in the first place. The Commission decided that they preferred to reform an offender.

Rep. Juneau asked about the difference between charge bargaining and plea bargaining. Ms. Fox said that an offender is arrested for a certain offense but in the investigation process, the offender has some leeway with regard to what the prosecutor wants to charge the offender with. Later on in the process, the offender receives a chance to plead guilty or not guilty to the charge. The offender can then plea bargain by agreeing to plead guilty if given a lesser charge.

Background on Sentencing Commission's Work and Review of its Crime Seriousness Ranking

Ms. Fox stated the following:

- The crime serious ranking was developed by the Sentencing Commission for use in sentencing policy.

- The Commission adopted three factors to rank crime: (1) nature and degree of harm caused or likely to be caused by the offender; (2) the culpability of the offender; and (3) the rights of the victim.
- Ms. Fox provided a copy of Draft CRIME SERIOUSNESS RANKING IN MONTANA: By Crime and Description -- (not including drug offenses, or 3 strikes, fines or other conditions) and a crime-serious ranking exercise for Committee use. (EXHIBITS #3 and #4 respectively)

For purposes of this exercise, the Committee was asked to take the two crimes in Exhibit #4 and rank them based on the Sentencing Commission's three factors for ranking crime, the criminal justice policy under the Montana Constitution, and the correctional and sentencing policy under 46-18-201, MCA , keeping in mind that a particular crime, such as aggravated kidnapping for example, may fall under two different crime levels depending upon the circumstances of the crime.

- Ms. Fox provided a copy of Draft CRIME SERIOUSNESS RANKING IN MONTANA: By Crime and Sentence Range -- (not including drug offenses, or 3 strikes, fines, or other conditions) and a copy of Draft CRIME SERIOUSNESS RANKING IN MONTANA: Analysis of levels of Crime Seriousness Ranking. (EXHIBITS #5 and #6 respectively)
- There are 10 levels to rank crime; Level 1 being the most serious crime to Level 10 being the least serious crime. The top five levels have mandatory minimum sentences.

Rep. Juneau asked since assault on a peace officer or judicial officer has its own Level IV crime ranking, does it exclude them from other criminal levels. Sen. Bartlett said that the County Attorney would make that determination at the time the offender is charged.

Sen. Grosfield asked if there was a way to compare lengths of sentence for a particular type of crime. Sen. Bartlett said that it would be difficult for the Committee to rely on Department information because of the many statute subsections that set out different data elements and penalties for the same type of crime. The information on sentencing within the Department will generally reference the Code section number that an offender was sentenced under but it does not identify whether the crime falls under subsection (a) or subsection (b), for instance. As a result, the information will tell what the crime is but not what the data elements of the crime are.

Rep. Juneau asked if the sentencing information referred to adult offenders only and was it for state incarceration purposes only. Ms. Fox said that the sentencing information is strictly state adult felony information with the caveat that juveniles can be transferred into District Court and subject to the same punishments. The federal corrections system is very different from Montana's system in that it has a guideline system and mandatory and narrow ranges of sentence. Even though it appears that the federal system has lesser sentences, it does not because the offender spends all of the sentence in incarceration.

Ms. Fox provided the following reference documents from the U.S. Department of Justice: (1) Reconsidering Indeterminate and Structured Sentencing; (2) Incorporating Restorative and Community Justice Into American Sentencing and Corrections; and (3) The Fragmentation of Sentencing and Corrections in America. (EXHIBITS #7, #8, and #9 respectively)

RETHINKING PROBATION AND PAROLE, PRE-SENTENCE INVESTIGATIONS

Mike Ferriter, Administrator, Community Corrections Division, Department of Corrections, provided an overview of an actual pre-sentence investigation (PSI). (EXHIBIT#10) Mr. Ferriter stated the following:

- Probation and parole officers submitted 2,087 PSI reports in 1999 and PSIs serve as the foundation for sentencing in District Courts.
- The entire criminal justice system, including Judges, rely on PSI reports as the offender moves through the system.
- The Probation and Parole Bureau established a consistent PSI format in 1990 following an extensive project funded by the National Institute of Corrections (NIC).
- Montana's PSI format has been published in the National Corrections Journal and has been replicated by other jurisdictions.
- Most District Court judges accept the sentence recommendations included in the PSI.

Rep. McGee asked if PSIs are required prior to all sentences and, if not, what prohibits Montana from requiring them. Mr. Ferriter said that PSIs are conducted on approximately 70% of Montana's felony cases and it is the District Court's decision, not the Department's, as to whether a PSI is required. Some jurisdictions require PSIs on 100% of their cases, others do not.

Sen. Grosfield asked why some jurisdictions are not requiring PSIs. Mr. Ferriter said that the Department's budget includes funding for PSIs and it is responsible for providing the service to District Courts. In those cases where PSIs are not requested, it is a matter of the Judge's style. However, the largest Montana communities are at or very close to 100%. Ms. Fox added that in cases where Judges know that there will be a suspended or deferred sentence, they are less likely to request a PSI.

Sen. Bartlett stated that in the 1997 Session, a statute was adopted that states that the Court shall order a PSI unless the Court makes the finding that a PSI is unnecessary. Another condition is that the defendant must be an offender convicted of an offense that may result in incarceration for one year or more. According to testimony, probation and parole officers commented that there were instances where a PSI report was written six months before sentencing. In the meantime, the offender committed another offense, was convicted, and the officers did not feel that conducting another PSI would add anything substantial to the case.

Rep. McGee asked who establishes the level of supervision that can be applied to an offender. Mr. Ferriter said that the Department performs a risk and needs assessment that provides a score that tells what level of supervision an offender should be under. Resources drive the contacts that the Department makes with the offender. Rep. McGee asked why the PSI did not address levels of supervision and risk and needs assessment as part of the report. Mr. Ferriter said that the risk and needs assessment is a post-sentencing tool that addresses past offenses and educational and employment levels while the offender is incarcerated. The assessment is, in a sense, an updated PSI in that the Department hopes that the offender will improve during incarceration through case management, resulting in a lower level of supervision upon probation or parole.

Sen. Nelson asked how many times an offender is seen by a probation and parole officer under each level of supervision. Mr. Ferriter said that maximum supervision requires visitation twice a month; medium supervision, once a month; minimum supervision, once every three months; and administrative supervision, twice a year.

Sen. Grosfield asked how often the Department reevaluates an offender on probation or parole. Mr. Ferriter said the Department's goal is that an offender improve and they are reevaluated every six months.

1999 Budget Request For Probation and Parole

Mary Fay, Probation and Parole Bureau Chief, Department of Corrections, provided written information regarding the Probation and Parole System. (EXHIBITS #11 and #12 respectively) Ms. Fay stated the following:

- During the 1999 Session, a EPP request was made for a significant increase in staff.
- Every probation and parole officer's caseload was between 90 and 120 offenders in the larger urban areas and the high growth areas.
- The EPP requested 27 FTE for FY 2000 and 16 FTE for FY 2001.
- The 43 FTE included 33.5 probation and parole officers, 6.5 for administrative support, and 3 transportation officers.
- The Legislature approved 15 positions which have been filled except the two ISP officers approved for 2001.

Rethinking Probation and Parole

Mr. Ferriter provided a map that displays the current and proposed statuses of probation and parole resources. (EXHIBIT #13) He said that in order to fulfill the Community Corrections Division's mission to provide effective supervision that supports the needs and concerns of crime victims and the citizens of Montana, Director Day, Ms. Fay, and he approached Governor Racicot and relayed to him their concerns

about public safety and probation and parole's inability to provide the level of supervision and services that they felt needed to be done at an acceptable level. Mr. Ferriter also shared the following facts with the Governor:

- The Probation and Parole Bureau currently supervises more than 6,200 juvenile and adult criminal offenders.
- In Starkenburgh v. State, the Montana Supreme Court ruled that the Probation and Parole Bureau had a duty to exercise reasonable care to control offenders and prevent them from doing harm.
- In the past year, there has been a 6.55% growth in the adult offender population supervised by the Bureau.
- Probation and parole officer caseloads are averaging 89 adult offenders per officer while surrounding states are averaging 70 offenders.
- Sex offenders are less likely to reoffend while in sex offender treatment and under close monitoring by specialized officers.
- Intensive family and community-based treatment that addresses multiple causes of serious antisocial behavior in juvenile offenders has demonstrated a reduction of 25% to 70% in long-term rates of rearrest.
- According to the 1997 Board of Crime Control Report, juvenile offenses against persons are increasing in Montana.
- The July 1999 Journal of National Institute of Justice documents reductions in the rate of reoffense for offenders who focus on employment strategies.

Mr. Ferriter said that the Department's objectives using the rethinking probation and parole concept are the following:

- Increase the amount of time probation and parole officers will have to provide services to victims, effective case management, and monitoring offenders.
- Reduce the offender revocation commitment to adult prison and juvenile correctional facilities by 15%.
- Collect 20% more restitution each year.
- Increase and improve communication and contact with crime victims and communities.
- Make treatment and job development available to offenders which will provide better opportunities for choosing a crime free and financially responsible lifestyle.

Ms. Fay provided an overview of the Probation and Parole Bureau's new offender case management and supervision policies and procedures. (EXHIBIT #14)

Rep. Juneau asked if the Department paid the offender's anger management counseling fee. Ms. Fay said that much of the Department's treatment money goes to sex offender therapists and the Department's goal is to have the offender pay for their treatment. However, the Department has a fund of approximately \$75,000 that is used to help offenders who are unable to pay or who get behind.

Sen. Grosfield asked how the Department could determine whether an offender could cover all or part of their treatment. Ms. Fay said that the PSI covers offender finances in addition to the offender's monthly report. Referring to #E on the risk assessment scores (See Exhibit #14), Sen. Grosfield asked why more points were given to younger offenders. Ms. Fay said that usually, the younger the person, the higher probability of reoffending and acting out. Offenders become less active as they grow older.

Rep. McGee asked who does the initial establishment of supervision levels and who has the authority to change supervision to a different level. Ms. Fay said that the offender's probation and parole officer makes the judgment with the help of the risk and needs assessment, the PSI, and the audits in ACIS to make sure that the risk assessment scores are accurate. Rep. McGee asked who is overseeing the probation and parole officer. Ms. Fay said that the regional administrators perform audits every 6 to 8 weeks on a percentage of the probation and parole officers cases. Supervision levels by the officers can be overridden and made either higher or lower. Rep. McGee asked how many offenders were recommended for a conditional discharge from supervision because the workload was above the level of resources available to appropriately supervise offenders. Ms. Fay said none, because the Bureau has never used that particular policy.

Ms. Fay provided a copy of the assessment of needs that will be used to prioritize offenders' needs within their case management plans. (EXHIBIT #15)

Modified Positions

Ms. Fay stated the following:

- Following a workload analysis, 16 adult officers, 2 juvenile officers, 4 sex offender officers who have the combined responsibility and special training to be victim advocates, and 12 one-half-time probation officer technicians were hired or in the process of being hired.
- Contract services include chemical dependency services, employment services for offenders who are unemployed or underemployed, and multi-systemic therapy services for juvenile offenders. A pilot program has been established in Kalispell because it has the highest number of juveniles in the system and the highest number of revocations.
- Total contracted services amount to \$1,628,948 for FY 2001.

Sen. Grosfield asked if the multi-systemic therapy services included followup after release from Department supervision. Ms. Fay said that offender followup occurs ever three months, then six months, and then yearly after release.

Rep. McGee asked about the \$1.6 million cost since the funding was not approved by the Legislature. Mr. Ferriter said that the modified request is a FY 2001 request for probation and parole, including the

contracted services. Because the Legislature did not provide the resources needed for community corrections and probation and parole, a request for assistance was made to the Governor.

INMATE CLASSIFICATION

Candyce Neubaur, Classification Manager, Department of Corrections, stated the following:

- When inmates enter the prison systems, they are placed in the receiving unit at MSP or the reception unit at MWP.
- While in receiving or reception, offenders go through medical, educational, chemical dependency, and mental health assessments to determine their needs. If an offender is a sex offender, the offender goes through a sex offender assessment.
- For inmates who are parole eligible, the Board of Pardons and Parole is part of the process to reinforce to the offender court ordered and recommended treatments.
- A classification assessment is conducted to establish an inmate's custody level; to assess the risk that an inmate poses to the institution, other inmates, and staff; and to identify predatory offenders; and to allow the institutions to separate them accordingly.
- Custody levels determine the amount or degree of supervision needed to manage the inmates.
- There are six levels of custody at MSP: maximum security custody which includes administrative segregation inmates, close custody, medium restricted custody, medium unrestricted custody, minimum restricted custody, and minimum unrestricted custody.
- There are five levels of custody at MWP: maximum security which includes disciplinary segregation, close custody, medium custody, minimum 1, and minimum 2.
- Security levels and factors include perimeter fences, physical restraints, and the number of security staff supervision.
- The staff-inmate ratio is much higher in the maximum security and close custody levels of security.
- MSP has four security levels--high security, low security, maximum security compounds, and the outside living area. There are currently 82 inmates housed outside the MSP perimeter.
- MSP also codes its security levels by the color of an inmates coveralls.
- MWP has three security levels--high and low security and administrative segregation.
- To determine the appropriate custody level of each inmate, an objective classification is used that is easy to understand and easy to use.
- Inmates are reassessed on the severity of crime, sentence lengths, prior criminal history, institutional behavior, and treatment participation.
- The primary factor which determines the custody level of inmates is the length of time received. Inmates receiving lengthy sentences are placed in close custody. If inmates are within five years of release date, they are ineligible for minimum security; if within two years of release, they would be eligible for minimum security.
- The new classification system, developed following the 1991 prison riot, is based on the needs of the inmate populations and it allows them to make positive changes in their lives.

Gloria Cowee, Classification Officer, Montana Women's Prison, provided a copy of Inmate Classification: Montana State Prison and Montana Women's Prison--Offender Reclassification

Instrument. (EXHIBIT #16) Ms. Cowee and the Committee conducted an exercise to reclassify a fictional woman inmate using the reclassification instrument.

Sen. Halligan asked why an inmate's escape history was based only on the past three years. Ms. Cowee said that although staff would take prior escapes into consideration, both male and female inmate escape histories based on the past three years is a nationwide standard. Sen. Halligan asked how overall inmate programming is established once the needs assessment data is collected. Ms. Neubaur said that a needs assessment is conducted in the community and follows offenders to the institutions and back to the community--the goal being continuum of care.

Rep. McGee asked if PSIs help with inmate classifications, what happens if a PSI is not conducted. Ms. Neubaur said that if a PSI is not conducted, the Department is essentially starting at "ground zero" in that it has only the sentence, the conviction and its severity, and it may have some data on prior offenses. However, the percentage of inmates who did not have a PSI is very small.

Sen. Bartlett asked if the Department was cumulating the needs identified through the needs assessments for all inmates who enter the system in a fiscal or calendar year to see if the system was providing sufficient levels of programming. Mr. Ferriter said no, not in a statistical manner nor were contracted resources targeted for chemical dependency and employment based upon any scientific method.

Rep. Juneau asked if a woman inmate is classified as maximum security, what happens if the maximum security unit is full. Ms. Neubaur that the offender would be assessed, the maximum security classification would be overridden, and the inmate would be placed in close custody.

INTERSTATE COMPACT OF ADULT OFFENDER SUPERVISION

Mr. Ferriter said the following:

- Interstate compacts (46-23-1102 and 41-1-601, MCA) are used between Montana and other states when an offender who was convicted of a crime in one state wants to move to another state.
- The compacts are designed to provide supervision to all adult and juvenile offenders who cross state boundaries to live or attend school.
- Offenders must meet certain criteria (i.e., they must be a resident of the state that they are moving to, they must have some means of income, and they must have a place to live.)
- If offenders are permitted to return to their resident state, they must play by the resident state's rules.
- If the offender violates probation or parole in the resident state, the offender is returned to Montana to face a possible prison sentence for the violation.

- There is a movement by the National Institute of Corrections to formalize interstate compacts which would require all states to follow the interstate compact regulations and the 2001 Legislature could see legislation regarding this issue. Sen. B.F. "Chris" Christiaens will bring forward proposed legislation if, in fact, the formalization of interstate compacts nationwide is requested.
- Nationwide, there are 150,000 adult offenders currently under supervision through interstate compacts.
- In Montana, there are 727 probationers and 92 parolees who are Montana offenders currently in other states.
- Supervision of other state offenders in Montana include 336 probationers and 81 parolees.
- There are 33 Montana juvenile probationers and 19 parolees in other states and Montana is supervising 47 probationers and 8 parolees.

Sen. Halligan asked if an offender returns to his or her resident state and violates probation or parole, what kind of testimony is required by the various states under the compact. Mr. Ferriter said that most generally, the majority of communication on the violation is conducted through reports not probation and parole officers. If an offender violates probation and parole, Montana should honor the compact and return the offender to Montana because it poses a significant relationship and public threat problem.

PUBLIC COMMENT

Nick Tomaski, MSP Inmate Parent, reiterated his previous concern regarding his inability to access his son's files to see the evidence responsible for the reclassification of his son who is a MSP inmate to a higher security level due to an incite to riot charge. Mr. Tomaski was also concerned that the Department continues to be in violation of its own Policy No. 3.4.1 which provides that a defendant must receive orally and in writing a statement of the findings, evidence relied upon, sanctions, and reasons for the sanctions. **Dan Chelini, Department of Corrections**, said that the issue surrounding Mr. Tomaski's inability to access his son's files is one of security--the investigative file indicates that if the information were to be exposed, it could pose a threat to the other inmates involved.

There being no further business; the meeting recessed until 8:30 a.m., February 11, 2000.

LAW, JUSTICE, AND INDIAN AFFAIRS FEBRUARY 11, 2000 ROOM 487, FEDERAL BUILDING

(Visitor's List - ATTACHMENT #3)

The meeting reconvened at 8:40 a.m. Roll call was noted; Senators Bohlinger and Halligan and Representative Shockley were excused. (ATTACHMENT #4)

COURT FUNDING AND STRUCTURE COMMITTEE: STATE FUNDING OF DISTRICT COURTS

Dave Woodgerd, Chief Counsel, Department of Revenue, said that Senate Bill No. 184 established the Court Funding and Structure Committee, staffed by the Department of Revenue, to study funding sources for District Courts. Currently, the District Courts receive some state funding for District Court Judges' salaries, for local governments if they have large trials that they cannot afford to fund, for psychological evaluations, and for some Youth Court activities. The Court Funding and Structure Committee has recommended the following:

- that District Courts should be funded entirely by the state rather than local governments because of the existing inequities in terms how much money each District Court receives and the conflicts between local government officials and District Court Judges regarding the payment of certain fees;
- that there be no changes to the current structure of the District Court system;
- that District Court Judges and District Court Clerks remain elected officials, although discussions have been held as to whether clerks and other Court employees would become state employees or remain local employees;
- that there be no changes in the funding of the Justice and City Courts; and
- further discussions will be held regarding current budgets, which state funding would be appropriate, and how the court funding will work within a state system.

Rep. McGee asked if District Courts were previously funded by the state and why the Committee thought District Courts should be funded by the state. Mr. Woodgerd said that he believed that District Courts have always been funded locally. The logic behind the switch to state funding is funding inequities among the District Court jurisdictions, that local governments question why they should pay for the enforcement of laws enacted by the state, and inconsistencies in procedures on a statewide basis.

Rep. Matthews asked how the switch to state funding would affect the smaller counties that do not have large caseloads. Mr. Woodgerd said that to date, the Court Funding and Structure Committee is not contemplating any of those types of changes and what happens down the road is anyone's speculation. The Committee's idea is to determine local level budgets and fund them at that level.

Rep. Stovall asked what percentage of the local government budget is currently being funded by the state. Mr. Woodgerd said that the percentage of state funding was relatively small and it is used for extraordinary expenses that arise. He added that along with the Court Funding and Structure Committee, another study committee (the Local Government Funding Committee), whose membership includes Sen. Grosfield, is studying local government funding in general and trying to streamline the disbursement of revenue that local governments receive. Eventually, both Committees will be folded into one to establish a broad overall picture of what the funding to local governments should look like.

Sen. Grosfield commented that the issues are more complicated than the state just taking over the funding and redistributing the same amount of money back to local governments. There are many employees who would become state employees and currently local government employee salary structures are different.

Sen. Bartlett commented that the Supreme Court reimburses the counties for criminal cases which may be the single largest sources of state money that county District Courts receive. The percentage of that source of money within the individual district budgets varies substantially among the counties because it only represents criminal cases. Because Helena is the seat of state government, for example, the larger percentage of the District Court's caseload is civil cases. As a result, the amount reimbursed from the state for criminal cases represents a lesser amount of the District Court's budget in Helena than it does in another District Court where the criminal caseload is a larger proportion of its total caseload. Other issues involved are court reporters and whether they are county employees who are subject to all personnel policies, restrictions, and benefits of being county employees or whether they are independent contractors and not subject to county policies. This discussion plays into the overall issue of transferring certain personnel to state-employee status and whether juvenile probation officers will remain employees of the District Court.

Sen. Grimes asked if the Legislature could expect a change to the Department of Justice budget. Mr. Woodgerd said the District Court funding would become part of the Supreme Court's budget. Sen. Grimes commented that personnel and pay protection issues will be critical and they should be clarified before the 2001 Legislature.

Rep. McGee asked about the cost of the switch. Sen. Grosfield said that cost would be approximately \$30 million and that the Local Government Funding Committee would review in detail how the funding would work.

Sen. Bartlett asked if Public Defender and County Attorney salaries would be part of the package. Mr. Woodgerd said no.

Dave Ashley, Department of Administration, provided an overview of Transition Issues to Change District Courts from a County to a State Program. (EXHIBIT #17)

Sen. Bartlett asked if another committee were reviewing juvenile probation officer salaries. Ms. Kurtz said that the Local Government Subcommittee of the Education and Local Government Interim

Committee is reviewing juvenile probation officer salaries. The Juvenile Probation Officers' Association has also made several proposals that would involve partial state assumption of JPO salaries.

U.S. ATTORNEY'S OFFICE

Beth Binstock, LEC Coordinator, U.S. Attorney's Office, Billings, said that she coordinates the efforts of state, local, federal, and tribal law enforcement throughout Montana by providing community outreach through training. It is Sherry Matteucci, U.S. Attorney's goal to collaborate on a more frequent basis with state agencies because there are more juveniles and more violent offenses being tried through the federal court system. There are also many joint task forces throughout the state meaning that there are many drug offenses being investigated by state, local, and federal agents that are going through the federal court system for the purposes of stiffer penalties and other treatment programs. Ms. Binstock requested that the Committee and the U.S. Attorney's Office share information in a joint effort and she offered the U.S. Attorney's Office help if the Committee needed it. She also requested an agenda time so that Ms. Matteucci could speak with the Committee.

STATUS OF INDIAN EDUCATION

Denise Juneau, Indian Education Specialist, and Mike Jetty, Office of Public Instruction, presented a slide presentation on the status of Indian education in Montana. (EXHIBIT #18) They also provided information on DEMOGRAPHICS: Racial and Ethnic Distribution: by percentages and a Directory of Indian Education Programs in Montana. (EXHIBITS #19 and #20 respectively)

Ms. Juneau and Mr. Jetty stated the following:

- Historically, Indian education has been the assimilation and the culturization of the Indian Nations.
- The high Indian dropout rate between elementary school and high school, the few number of Indian students who graduate from high school, and an even fewer number of Indian graduates from higher education are indications that the educational system in Montana is not conducive to Indian students.
- Indian people are not promoting having more Indian teachers, they want quality teachers, whether Indian or nonIndian, and part of that quality is knowing how to teach Native American students.
- There are 59 Montana schools identified for Title I improvements. Of the 59 schools, over 60% are on or near reservations.
- They suggested that the Committee review the schools' accountability measures to find out whether students are learning.
- They requested that the Committee support legislation to fund the Montana Advisory Council on Indian Education (MACIE).

Rep. Stovall commented that Indian people must educate all of the people of Montana but he was unsure whether that education could be done through the school system. He said that the problem with having

Indian culture curriculum in public schools is which tribal culture will be used (i.e., all of the tribes or the tribe located in the area of the school). Although the issue needed to be addressed, he suggested that OPI move slowly on the integration of Indian education in public schools to avoid resistance. Ms. Juneau's position was that Montana schools were not moving fast enough to integrate Indian education in public school curricula. She said that Montana has been talking about the implementation of Article X of the Montana constitution for 27 years and has done very little to implement it. Indian education must start somewhere and with the implementation of House Bill No. 528, OPI has begun to establish educational goals for Montana's schools.

Norma Bixby, MACIE, said that the MACIE has requested that OPI gather necessary data to create a picture of what was happening with Indian education in Montana's schools. Now, Montana must go forward with that data to create change within the classrooms. In addition, teachers' attitudes on how they treat Indian children must be changed. Ms. Bixby hoped that HB 528 would create change and awareness. MACIE would like to help in the development of curricula and research and she requested that the Committee support an increase in funding to OPI for Indian education and for MACIE so that the Indian Nations can be made a part of Montana. She said that Native Americans have lived in Montana for many years and they are not going to go away.

Sen. Bartlett said that what stymied her was the breadth of issues in HB 528 that needed to be addressed, the longevity of Indian issue problems, and the limitation on resources. She asked what OPI would be focusing on so that concrete differences in Indian education could be seen. Ms. Juneau said that OPI has developed several pilot projects on reservation-based schools that focus on expectations and professional development and they help develop frameworks for Indian education. She and Mr. Jetty also travel the state to talk with the school boards and encourage them to develop Indian education programs. However, Ms. Juneau perceived that until Native Americans who understand the culture take on leadership roles in schools, no dramatic change will be seen.

Stan Juneau, Retired School Superintendent, said that the problem with implementing cultural and language components within the school systems is that there are no models to follow. He added that cultural and language programs are not funded through the state general fund but through federal funds and once the federal funding is gone so are the programs. He said that the passage of HB 528 addresses all school districts statewide and gives them an opportunity to include Indian education in their curriculums. Once an appreciation for the different cultures is established and as graduates enter the higher education system, they will demand that the higher education system change.

Ms. Juneau added that institutional racism is also imbedded throughout Montana and Native Americans are having a difficult time getting past it.

Cil Robinson, MT Board of Crime Control (MBCC), said that she staffs the Youth Justice Council Subcommittee that is reviewing disproportionate, minority-in-confinement problems. Montana has an over-representation of Native Americans in confinement and it is federally mandated to address the issue. The biggest problem she finds agency wide is that they approach the problems with a narrow-sided approach to the part of the problem that a particular agency has. What is really being discussed is children and how to educate children. She said that Native American and minority youth are generally raised in poverty. Some of the issues that effect those people are lead poisoning, alcohol consumption during pregnancy causing fetal alcohol syndrom (FAS) or fetal alcohol effects (FAE), and the fact that for four generations Native Americans were raised in boarding schools resulting in four generations who have no parent models. Montana needs to find ways to reach Native American parents and help them learn how to parent and it needs to look at what it can do to help communities and families address environmental issues, such as FAS and FAE.

Sen. Grimes asked if FAS and FAE were strong contributors to the educational problems of Native American and minority children. Ms. Juneau said alcoholism is a poverty issue which is why it is important to have a holistic view of poverty communities. Sen. Grimes commented that the Legislature understands the Native American poverty issues. However, they cannot understand the overemphasis on racism and discrimination when the focus should be on alcoholism and other social issues to stabilize the homes and help with the educational problems on the reservations. Ms. Juneau said that education is the way to cure racism and discrimination. As more Indians become educated, they can return to their communities to make them better. However, the Native American people must take that on themselves.

Sen. Nelson said that the Fort Peck Indian Reservation is part of her district and FAS and FAE are very serious problems and they must be addressed in order for Indian students to be more successful. Indian children also need more role models and she felt that in Poplar, in particular, Indians could totally control the school board. However, encouraging them to run for the school board is a very difficult task. She asked what could be done to encourage more Native Americans to take on the responsibility. Mr. Jetty said that the Voices of Indian Communities for Education teaches parents how to work within the different systems and how they work would be very helpful. He said that there is historical mistrust that is directly associated with schools and schools are viewed as an imposition rather than an opportunity. There needs to more grass roots movements from the Indian communities to support those types of efforts.

Rep. Gutsche said that Indian Peoples Action has been very active within the Missoula school systems. Recently, IPA published a "F report card" in the newspaper regarding the Missoula schools and it was a very good wake up call for those who are supposed to be accountable. IPA has worked with the schools, the superintendents, the principals, and the teachers to try to make improvements and find out where the problems lie. However, accountability is still nonexistent.

Rep. Juneau suggested that Mr. Jetty and Ms. Juneau give their presentation to the Education and Local Government Interim Committee and to any legislative committee that could provide funding. She said that it has been confusing to her as to what Indian issues to bring before the LJAC. She asked if the LJAC was responsible for all Indian issues or should she be referring issues, such as welfare reform and education, to those interim committees that deal with those issues. Referring to Sen. Nelson's question regarding Native Americans on the school boards, she commented that it is very challenging for Native Americans to become a part of something that is nonIndian. The school systems, the school boards, and the Legislature are western nonIndian political activities and support systems from leaders such as herself need to be provided to Indian people in order for them to participate in political systems that have normally been nonIndian.

HB 670 UPDATE AND THE NEW COORDINATOR OF INDIAN AFFAIRS

Lori Ryan, Coordinator of Indian Affairs Office, said that Governor Racicot has appointed Donald "Louis" Clayborn as the Coordinator of Indian Affairs. Mr. Clayborn was the Coordinator of Indian Affairs during the Schwinden Administration; he is an enrolled member of the Fort Belknap Tribe; he is currently Executive Director of the Montana United Indian Association that deals with the statewide urban JTPA program; and he has been involved in many Indian programs throughout the years.

Ms. Ryan said that the HB 670 (Indian Economic Development Act) Board had its first meeting in November and another is scheduled for March. The RFP for the assessment of the tribes will be let within the next 30 days. HB 670 allowed for two FTE positions--a grants coordinator and a grants writer. Their job descriptions have been written and the Board is currently working with the Department of Administration on the classification of the descriptions. She added that the Board has discussed several options regarding economic development including coordinating services for tribes and working with tribal planners and urban organizations to begin funneling all information into one central spot for access. The Board includes seven representatives from the reservations and it has invited the Little Shell Tribe, which was omitted from HB 670 because it was not federally recognized at the time that HB 670 was enacted.

Rep. Juneau commented that HB 670 will sunset during the 2001 Session and she requested that the Economic Development Board proceed as speedily as possible with the job descriptions so that the two FTE can be hired. She said that it will be very difficult finding staff for a 1-year position and she requested that the Committee consider legislation for the continuation of HB 670 and make some changes to strengthen it.

Sen. Grosfield asked if Mr. Clayborn could be at the Committee's next meeting in Shelby. Ms. Ryan said that Mr. Clayborn will be very busy with the tribal health and Tribal Leader's meetings in Billings. However, she hoped that he would be available for the Committee's next meeting.

HB 412 UPDATE

Rep. Juneau provided a geographic sites name change application and a list and overview of sites in Montana that use the word "squaw" in their names. (EXHIBIT #21) She said that if someone submits a name change, they should attach letters of support from the community including county commissioners and representatives and senators from the area, particularly in tribal areas. There are four sites for which name change applications have been submitted and one site in Helena (from Squaw Gulch to Wakina Sky Gulch) has been approved. There are four priority sites that needed name changes as soon as possible--one in Meagher County, Park County, Sweet Grass County, and Yellowstone County. The next meeting is in Helena on March 10, 2000, and the HB 412 Advisory Board plans to meet every two months on the second Friday.

Sen. Bartlett asked who the Advisory Board had to work with to identify mines. Rep. Juneau said that all of the sites were identified by the Department of Natural Resources and Conservation.

COURT LIAISON FUNCTION

Valancia Lane, Staff Attorney, Legislative Services Division, said that at its December meeting, the Committee requested additional information on federal habeas corpus legislation that was to "limit federal habeas corpus appeals" and whether it would reduce the Montana Supreme Court's workload or whether it would make the appeals by criminals of their criminal convictions move faster. Ms. Lane noted that Pam Collins who is on the Capital Litigation Team for the AG's Office, was present to answer any questions. Ms. Lane also provided the following background information:

- In 1997, the Legislature adopted House Bill No. 222 introduced by the Department of Justice in response to changes to the federal habeas corpus laws in 1996.
- Once a person is convicted in Montana, there are three ways to appeal the conviction: (1) a right of direct appeal to the Montana Supreme Court; (2) a post-conviction hearing through the District Court and only available if new evidence is presented that was not available to the offender at the

first trial; and (3) filing a writ of habeus corpus in federal court which is where the delays mount up. For example, Duncan McKenzie filed his first habeus corpus petition in 1981. It was 13 years later, in 1995, that he was actually executed under his conviction.

- The Attorney General's Office estimated that if the law changes had been in effect during the Duncan McKenzie case and had been applicable to the appeals, it may have reduced the appeals process by six years.
- The federal law was designed to make the appeals go faster and it ensured that the states that "opt in" would get expedited handling in federal court of the federal habeus corpus appeals.
- In order for states to "opt in" to the expedited procedure, they had to guarantee the right to appeal in post-conviction cases involving the death penalty, guarantee the right to counsel, and establish minimum standards for competency of attorneys who represent death penalty defendant in post-conviction proceedings.
- HB 222 made changes to Montana's post-conviction hearings procedures, provided that the Attorney General would request that the Supreme Court adopt the competency standards which have only recently been adopted, guaranteed attorney compensation appointed to represent people in capital cases, and provided appropriation for necessary staff resources.
- HB 222 has had no effect to date because all current death row inmates were convicted prior to the 1997 changes and therefore not subject to the expedited procedures.
- The expedited state laws in many of the states may be subject to challenge which could result in further delays.
- HB 222 will not affect the Montana Supreme Court's workload at all. It only affects the time frame in the federal courts.

Pam Collins, Department of Justice, added that because the statute is in place and the Supreme Court has adopted competency standards for attorneys in post-conviction and capital proceedings, Montana qualifies under the expedited provisions within the federal Writ of Habeus Corpus Act. However, she was certain that HB 222 would be challenged in federal court by the first defendant who falls under the expedited provisions. In addition, not a single state has been determined to have complied with the expedited procedures.

Sen. Grosfield asked if habeus corpus appeals happened only in capital cases. Ms. Collins said that the expedited provisions apply only to capital cases. However, habeus corpus appeals encompass all defendants who apply for habeus corpus in federal court. Habeus corpus appeals to the Montana Supreme Court relate to whether a defendant's incarceration is illegal in terms of the length of time or for disciplinary proceedings and they are under the jurisdiction of the Department of Corrections not the Department of Justice. Sen. Grosfield requested more information on direct appeals to the Montana Supreme Court.

Intermediate Appellate Courts

Ms. Kurtz provided an article regarding the Supreme Court's argument for the need of an intermediate appellate court in Montana and a more detailed description of its makeup and an article regarding a series of controversial rulings made by the Supreme Court in recent months. (EXHIBITS #22 and #23 respectively)

Sen. Grosfield said that on March 10, the State Bar of Montana will meet with state judges in Billings to discuss various issues. The Bar is also sponsoring four debates between Justice Nelson and an attorney from Malta regarding whether Montana should have an intermediate appellate court. Committee staff will inform Committee members of the locations as soon as the information is available. He urged Committee members to attend at least one debate because it is an issue that the Committee will have to address at a future meeting.

OTHER BUSINESS

The Committee approved April 13 and 14, 2000, as the next meeting dates in Browning and Shelby.

Sen. Grosfield asked Committee members to consider what appropriate issues should the Committee be reviewing with regard to Indian Affairs. Should it review the broad spectrum of issues or refer an issue, such as Indian health, to another interim committee? Future agenda items will be an update of the Indian burial laws, an update on the Economic Development Act, and an update on whether there should be a Commission on Indian Affairs rather than a Coordinator of Indian Affairs.

Sen. Nelson asked what issues the Committee could handle and do them justice. Ms. Kurtz said that other large Indian issues are being considered by other interim committees. When SB 11 was being developed, it was a struggle to decide what to do with Indian affairs and serious thought was given to keeping it a separate committee. Once the interim is over, the Legislative research staff will recommend possible changes to the interim structure. She added that the Committee on Indian Affairs was attached to the LJAC because of the jurisdictional issues that come before the Department of Justice and the House and Senate Judiciary Committees.

Rep. Juneau's concern was how the public and the tribes perceive the LJAC. Since Indian affairs under the Committee is a broad perspective, most perceive the Committee as the appropriate forum for issues pertinent to Indians and their relationships with the state. However, there are many complex issues and everything that the state does has a relationship with Indians. Indians need some assurance that other interim committees are addressing the issues that impact Indian people and, if SB 11 is changed, the language should state that. She added that in her discussions with Gordon Belcourt of the MT-WY Tribal

Leaders Council, she learned that there is a rumor among the tribes that the Commission on Indian Affairs would be dead on arrival to the Legislature. The Committee should assure the tribal people that things are going forward and being done with regard to the Commission.

Sen. Bartlett commented that issues such as Indian health and education, in addition to being pertinent to other interim committees in terms of subject matter, also involve appropriations. She suggested that presentations on the issues be given to the appropriate appropriations committees as well.

Rep. Juneau provided an article on the Blackfeet water rights issue. (EXHIBIT #24) She said that the Blackfeet Tribe has not negotiated any water rights with the state. It may be an issue at the April meeting but the Tribes position at present is that there will be no negotiations. She was unsure whether the next step would be further mediation or litigation.

Sen. Grosfield suggested hearing the Tribe's non-negotiation stance and what its position is at the next meeting. He said that the law that sets up the Reserved Water Rights Compact Commission states that if one of the entities shuts off negotiations, the state "shall" litigate. He requested that Committee staff receive an update from the Department of Justice regarding the Compact Commission before the next meeting.

Sen. Nelson suggested that the Committee tread lightly with issue because the state has a Reserved Water Rights Compact Commission.

Rep. Juneau added that other issues being reviewed by the Blackfeet Tribe is the Canadian Border and the separation of the Blackfeet Confederacy. She added that tribal members will most likely bring up the topics of jobs and economic development also.

There being no further business, the meeting adjourned at 12:00 p.m.

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